

<b>Title</b>	<b>Ownership of Bonds</b> (adopt canon 3E(4) of the California Code of Judicial Ethics)
<b>Summary</b>	This proposed canon and commentary would specify the circumstances under which ownership of corporate and government bonds would be considered a financial interest requiring disqualification of a judge who owns such bonds.
<b>Source</b>	Supreme Court Advisory Committee on the Code of Judicial Ethics
<b>Staff</b>	Mark Jacobson, 415-865-7898
<b>Discussion</b>	<p>A judge is required to disqualify himself or herself when the judge has a “financial interest in the subject matter in a proceeding or in a party to the proceeding,” unless the parties waive the disqualification. (Code Civ. Proc., §§ 170.1(a)(3); 170.3(b).) The term “financial interest” is defined as “ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of one thousand five hundred dollars (\$1,500), or a relationship as director, advisor or other active participant in the affairs of a party, . . .” (Code Civ. Proc., § 170.5(b).) “Financial interest” includes ownership of stock valued in excess of \$1,500. (Com. on Jud. Performance, Ann. Rep. (1996) p. 20 [public admonishment <i>In re Stoll</i>].) Code of Civil Procedure section 170.5(b) sets forth several exceptions to the definition of “financial interest,” including mutual funds, but there is no exception for bonds of any type. (Code of Civil Procedure section 170 et seq. applies only to trial court judges, commissioners and referees. Canon 3E(3)(iii)(d) is the parallel provision for appellate justices, and it essentially tracks the Code of Civil Procedure provisions for trial court judicial officers.)</p> <p>The Supreme Court Advisory Committee on the Code of Judicial Ethics has recommended to the Supreme Court that the attached proposed canon be circulated for comment. The committee concluded that bond ownership should be analyzed under Code of Civil Procedure section 170.1(a)(6)(C), which states that a judge is disqualified if “a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.” Applying this test to a situation involving ownership of corporate bonds, a reasonable person is not likely to distinguish between corporate bonds and corporate stock. If a judge owns a corporate bond worth more than \$1,500 and the corporation is a litigant, one could conclude that there is a relationship between the judge and the company that might affect the judge’s impartiality. A reasonable person might perceive this situation to be the same as one in which a judge owns stock issued by one of the litigants worth</p>

more than \$1,500. Therefore, the proposed canon extends the rule applicable to ownership of stocks to corporate bonds. The proposed canon would provide that ownership of a corporate bond having a fair market value exceeding \$1,500 is disqualifying.

As to government bonds, the Political Reform Act requires disclosure by public officials of ownership of corporate bonds, but not government bonds. (Gov. Code, § 82034.) Under this statutory provision, the Fair Political Practices Commission distinguishes between corporate and government bonds on its form 700, *Statement of Economic Interests*. If the litigation could have a substantial effect on the government bonds held by the judge, e.g., if the litigation could change the bond rating of the issuing entity, disqualification would be appropriate under the proposed canon. Because government entities are litigants in a substantial percentage of lawsuits, necessity requires that government bonds be treated somewhat differently than corporate bonds. Otherwise, judges who own government bonds would be disqualified in a substantial number of cases. Based on these conclusions, the proposed canon would require that a judge's ownership of government bonds would be disqualifying only if the litigation has the potential to significantly affect the interest of the judge.

Consistent with the exceptions in Code of Civil Procedure section 170.5(b)(1) and canon 3E(3)(iii)(d) providing that ownership of mutual funds is not a disqualifying financial interest, the proposed canon provides that ownership in a mutual or common investment fund that holds bonds is not a disqualifying financial interest.

The text of the proposed canon and commentary is attached.

Attachment

Canon 3E(4) of the California Code of Judicial Ethics would be adopted effective January 1, 2004, to read:

**Canon 3E(4):**

Ownership of a corporate bond having a fair market value exceeding one thousand five hundred dollars is disqualifying. Ownership of a government bond, including a municipal bond, is disqualifying only if the outcome of the proceeding could substantially affect the value of the bond owned by the judge. Ownership in a mutual or common investment fund that holds bonds is not a disqualifying financial interest.

**ADVISORY COMMITTEE COMMENTARY:**

The distinction between corporate and government bonds is consistent with the Political Reform Act (see Gov. Code section 82034), which requires disclosure of corporate bonds, but not government bonds. Canon 3E(4) is intended to assist judges in complying with Code of Civil Procedure section 170.1(a)(3) and Canon 3E(3)(iii)(d).